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SECURITIES AND EXCHANGE COMMISSION

[Release No. 90001 / September 25, 2020/ SR-NYSE-2019-67]

Securities Exchange Act of 1934; Order Granting Petition for Review, Scheduling Filing of Statements, and Denying New York Stock Exchange LLC’s Motion to Lift the Stay; In the Matter of the New York Stock Exchange LLC Regarding an Order Approving a Proposed Rule Change, as Modified by Amendment No. 2, to Modify Chapter One of the Listed Company Manual to Modify the Provisions Relating to Direct Listings

This matter comes before the Securities and Exchange Commission (“Commission”) on petition to review the approval, pursuant to delegated authority, of the New York Stock Exchange LLC (“NYSE”) proposed rule change to amend Chapter One of the Listed Company Manual to modify the provisions relating to direct listings.¹

On December 20, 2019, the Commission issued a notice of filing of the proposed rule change, as modified by Amendment No. 1, filed with the Commission pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”)² and Rule 19b-4³ thereunder.⁴ On February 13, 2020, a longer time period was designated within which to act on the proposed

¹ The proposed rule change relates to direct listings that also involve a primary capital raising. This matter does not affect NYSE’s current rules related to direct listings that do not involve a primary capital raising.

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ See Exchange Act Release No. 87821, 84 FR 72065 (Dec. 30, 2019). NYSE filed the proposed rule change on December 11, 2019. On December 13, 2019, NYSE filed Amendment No. 1 to the proposed rule change, which amended and replaced the proposed rule change in its entirety.

rule change.⁵ On March 26, 2020, proceedings were instituted under Section 19(b)(2)(B) of the Exchange Act⁶ to determine whether to approve or disapprove the proposed rule change.⁷ On June 22, 2020, NYSE filed Amendment No. 2 to the proposed rule change, replacing the proposed rule change, as modified by Amendment No. 1, in its entirety. On June 24, 2020, the Commission issued a notice of filing of Amendment No. 2 to the proposed rule change.⁸ On June 24, 2020, a longer time period was designated for Commission action on proceedings to determine whether to approve or disapprove the proposed rule change.⁹ On August 26, 2020, after consideration of the record for the proposed rule change, the Division of Trading and Markets (“Division”), pursuant to delegated authority,¹⁰ approved the proposed rule change, as modified by Amendment No. 2 (“Approval Order”).¹¹

On August 31, 2020, pursuant to Commission Rule of Practice 430,¹² the Council of Institutional Investors (“CII”) filed with the Commission a notice of intention for review of the Approval Order. Pursuant to Commission Rule of Practice 431(e), the Approval Order was stayed by the CII filing with the Commission the notice of intention to petition for review.¹³ On September 4, 2020, NYSE filed a motion for the Commission to lift the automatic stay of the Approval Order and a brief in support of its motion to lift the stay. On September 8, 2020, CII

⁵ See Exchange Act Release No. 88190, 85 FR 8981 (Feb. 20, 2020).

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Exchange Act Release No. 88485, 85 FR 18292 (Apr. 1, 2020).

⁸ See Exchange Act Release No. 89148, 85 FR 39246 (June 30, 2020).

⁹ See Exchange Act Release No. 89147, 85 FR 39226 (June 30, 2020).

¹⁰ 17 CFR 200.30-3(a)(12).

¹¹ See Exchange Act Release No. 89684, 85 FR 54454 (Sept. 1, 2020).

¹² 17 CFR 201.430.

¹³ 17 CFR 201.431(e).

filed a brief in opposition to NYSE's motion to lift the automatic stay. On September 8, 2020, pursuant to Commission Rule of Practice 430,¹⁴ the CII filed a petition for review of the Approval Order. On September 11, 2020, NYSE filed a reply brief in support of its motion to lift the stay.

Pursuant to Rule 431 of the Rules of Practice,¹⁵ the petition for review of the Approval Order of CII is granted. Further, the Commission hereby establishes that any party to the action or other person may file a written statement in support of or in opposition to the Approval Order on or before October 16, 2020.

Finally, the Commission finds that it is inappropriate to lift the automatic stay during the pendency of the Commission's review.¹⁶ CII argues that the proposed rule change makes changes to the initial public offering ("IPO") market that are "so significant that the Commission should maintain the stay" while it considers "the adequacy of investor protections" and other policy issues under the proposed rule change. We do not believe that NYSE has identified a compelling reason that lifting the automatic stay furthers the public interest, particularly in light of the policy considerations CII has identified. We do not believe it to be in the public interest to alter the status quo while the Commission considers the issues raised by the proposed rule change before it becomes effective. We accordingly deny NYSE's motion to lift the stay.

For the reasons stated above, it is hereby:

ORDERED that the petition of CII for review of the Division's action to approve the proposed rule change by delegated authority be GRANTED; and

¹⁴ 17 CFR 201.430.

¹⁵ 17 CFR 201.431.

¹⁶ See Exchange Act Release No. 60988 (Nov. 12, 2009) (refusing to lift automatic stay because the petitioner "raised important policy issues that warrant Commission consideration prior to allowing" rule change to go into effect).

It is further ORDERED that any party or other person may file a statement in support of or in opposition to the action made pursuant to delegated authority on or before October 16, 2020.

It is further ORDERED that NYSE's Motion to Lift the Automatic Stay is hereby denied; and

It is further ORDERED that the August 26, 2020, order approving the proposed rule change, as modified by Amendment No. 2 (File No. SR-NYSE-2019-67), shall remain stayed. By the Commission.

J. Matthew DeLesDernier,

Assistant Secretary.

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